IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9681 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIPAK KARSHANBHAI CHUDASAMA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9681 of 2004

MS SUBHADRA G PATEL for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 22/12/2004

ORAL JUDGEMENT

1. Heard ld. counsel Ms. Subhadra Patel for the petitioner detenu and ld. AGP Ms. HB Punani for the

State.

2. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the petitioner detenu has challenged the legality and validity of the order of detention dated 24.06.2004 passed by the Police Commissioner, Rajkot City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner detenu has been branded as "boot-legger" as defined under Sec.2(b) of the PASA ACt.

3. The order under challenge is based on the grounds considered by the detaining authority that are conveyed to the detenu. It reveals that for passing the detention order, the detaining authority has mainly considered the fact of registration of 4 different offences registered against the present petitioner detenu under sections 66B and 65E of sections of The Bombay Prohibition Act between 31.08.2001 and 04.06.2004 i.e. within a span of about 3 Years. Details qua all these offences are given in a tabular form in the grounds of detention supplied to the detenu when order of detention was executed on the detenu. The offence at Sr. No.1 of the table in the grounds of detention is of 31.08.2001 whereas offence at Sr.No.2 is of 18.12.2003. Third offence is of 30.05.2004 and last offence is of 04.06.2004. It appears from the record that after arrest of the detenu in connection with offence at Sr.No.4 i.e. on 04.06.2004, he was formally arrested in connection with the offence at Sr.No.3 registered on 30.05.2004. The detaining authority has also considered certain facts stated by two witnesses in their statements recorded by the sponsoring authority on 19.06.2004, which were verified by the detaining authority on 20.06.2004. It is argued that the statements have been recorded only with a view to prepare a case to obtain preventive detention orders from the competent authority and they are mechanically recorded otherwise the witnesses could not have waited in expressing their grievance from 10.04.2004 and 29.02.2004 respectively till the recording of their statements. So, it is wrongly recorded that the activities of the detenu are prejudicial to the maintenance of public order.

4. The petitioner has challenged the legality and validity of the order of detention on number of grounds as mentioned in the memo of the petition. Ld. counsel Ms. Patel for the petitioner, has taken this Court through the contentions raised in the petition. However,

ld. counsel has focussed his arguments mainly on two grounds. The first ground pressed into service is that the registration of four offences within a span of about three years can not be said to be a problem of public order and at the most it can be said that the same is problem of maintenance of law and order. Time gap between first two offences shown in the table has not been considered in correct perspective and especially the law concerning the preventive detention. With this background, the discretion of privilege exercised under sec.9(2) of the PASA Act is not exercised in accordance with the intention of the legislature.

5. The next point pressed into service by ld. counsel Ms. Patel is that this is a case of delay in forwarding the representation to the appropriate authority resulting into the delay in dealing with the representation made by the detenu. A written representation was made by the detenu on 05.04.2004 and though the same was received on 07.04.2004, it was despatched late by about 7 days i.e. on 14.07.2004. In support of this submission, ld. counsel today has tendered original letter received by the detenu through jail authorities wherein it is mentioned that written representation has been despatched to the government as well as to the Secretary of Advisory Board (PASA), Gandhinagar. This letter is of 14.07.2004. State Government has rejected the request by decision dated 21.07.2004. So, there is delay of about 12 days in dealing with and deciding the representation, which has remained unexplained. There is nothing on record to show whereby it can be inferred that the decision was taken promptly by the Government Machinery. So, it can be said that the representation dated 05.07.2004 received on 07.07.2004 has been decided after a lapse of about 14 days. In end numbers of decisions, the Apex Court has held that delay in dealing with representation will go to the root of the validity of the order of detention and unexplained delay would vitiate the order. So, it is rightly argued that in view of the ratio of the decision of the Apex Court in the case of Harish Pahwa v/s State of U.P., AIR 1981 SC 1126, the impugned order of detention also requires to be quashed on the ground of delay in communicating decision on the representation to the detenu promptly. Relevant observations of the Apex Court are reproduced as under:-

> "..... We may make it clear, as we have done on numerous earlier occasions, that this Court does not look with equanimity upon such delays when the liberty of a person is concerned. Calling

> comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. We would emphasise that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This is not having been done in the present case we have no option but to declare the detention unconstitutional."

In the same way, in the present case, there is a delay in forwarding the the representation as referred to above, by the officer who has become functus officio also, would adversely affect the validity of the detention. It is rightly submitted that the ratio of the decision of this Court in the case of Mineshkumar Hiralal Parmar v/s State of Gujarat, 2002(3) GLJ (U.J.) 2 would squarely apply to the facts of the present case (Spl.C.A. No. 5015/2002 Decided On 11.07.2002.) By placing reliance on the earlier decision of this Court and especially in Special Civil Application No. 9664/2000 Decided On 16.03.2002 (Mulshankar Kalyanbhai Jani v/s State of Gujarat), it has been held that "unexplained delay caused in deciding the representation even of 2 days, is fatal." This Court has expressed anxiety to the extent that delay of 2 days caused by the authority who was under obligation to apply mind and pass orders, must be promptly and delay of 2 days in taking decision is fatal.

So, in view of the ratio of aforesaid two decisions, only on this sole ground, petition requires to be allowed, without entering into the merits of other grounds.

6. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 24.06.2004 passed by the Police Commissioner, Rajkot City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C. K.BUCH, J]

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